IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8492 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RADHAKRISHNA HARIRAM JUNEJA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8492 of 1999

M/S S & S ASSOCIATES for Petitioner No. 1

Mr. PD Bhate, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 15/12/2004

ORAL JUDGEMENT

In this petition under Article 226/227 of the Constitution of India the petitioner has challenged the legality and validity of the order dated 17th August 1999 passed by the respondent No.3 in dismissing the appeal preferred by the petitioner and confirming the order passed by the respondent No.2 dated 28th March 1993 by which the respondent No.2 in exercise of powers under

Section 32-A of the Bombay Stamp Act, 1958 ["the Act" for short], has directed the petitioner to pay an amount of Rs. 43,331 by way of deficit stamp duty and to pay further amount of Rs. 250 by way of penalty.

2. None appears on behalf of the petitioner. It appears from the record of the petitioner that the petitioner has purchased the property in question by registered Sale Deed dated 18.7.1987 and the said docuemnt was presented before the Sub-Registrar, Surat on the same date which was registered at Sr. No. 5984. It also appears that the Sub-Registrar, Surat made a reference to the respondent No.2 under Section 32-A of the Act for determining the correct market value. Notice under Rule 4 of the Bombay Stamp [Determination of Market Value of Property] Rules, 1984 ["the Rules" for short] came to be issued by the respondent No.2 and provisional market value of the property in question came to be determined at Rs. 12,22,400. The petitioner was directed to produce necessary evidence with regard to market value. It appears from the order dated 20th March 1993 that nobody appeared on behalf of the petitioner and therefore the respondent No.2 passed the impugned order dated 20th March 1993 determining the market value of the property in question at Rs. 12,22,400 directing the petitioner to pay an amount of Rs. 43,331 by way of deficit stamp duty and Rs. 250 by way of penalty. Being aggrieved and dissatisfied with the order dated 20th March 1993 the petitioner preferred an appeal before the respondent No.3. Number of submissions were made by the petitioner before the appellate authority. However, it appears that the respondent No.3 has without dealing with the same dismissed the said appeal confirming the order passed by the respondent No.2. Being aggrieved and dissatisfied with the order passed by the appellate authority dated 17th August 1999 in dismissing the said appeal and confirming the order passed by the respondent No.2, the petitioner has preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

3. Considering the pleadings in the petition, it appears that the main contention on behalf of the petitioner is that the respondent No.2 has exercised the power after unreasonable period and there is no justification for delay in initiating proceedings under Section 32-A of the Act. It is also further submitted that necessary procedure which is required to be followed under Rule 4 of the Rules is also not followed and the petitioner was not informed the basis upon which the provisional market value was fixed which was required to be submitted along with the notice under Rule 4 of the

aforesaid Rules. It is also further submitted that in the impugned order dated 20th March 1993 nothing has been mentioned and/or any basis shown with regard to fixing the market value of the property at Rs. 12,22,400. Thus, it is submitted that the impugned order dated 20th March 1993 is a non-speaking order. It is also further submitted that the appellate authority has not considered and/or dealt with any of the submissions which were made at the time of appeal and the impugned order has been passed dismissing the appeal without considering the same.

4. Shri Bhate, learned AGP who appears on behalf of the respondents has submitted that in view of the fact that nobody remained present on behalf of the petitioner the respondent No.2 has passed the order fixing the market value of the property in question at Rs. 12,22,400 and therefore requested to dismiss the present Special Civil Application.

5. The document in question came to be executed in the year 1987. Notice under Rule 4, for the first time, came to be issued in the year 1992 and proceedings came to be initiated under Section 32-A of the Act after a period of 5 years. There is no affidavit-in-reply filed justifying the delay in initiating the proceedings after a period of 5 years. Even in the impugned order dated 20th March 1993 there is no justification shown for delay in initiation of proceedings after a period of 5 years. This Court, in Special Civil Application No. 654 of 2000 and Special Civil Application No. 4434 of 2003, while passing orders thereon has set aside the order passed by the authority under the Bombay Stamp Act where the powers were exercised after an unreasonable period without justifying any delay. Apart from that in fact in the impugned order nothing has been mentoned and/or there is no discussion and/or the basis shown fixing the market value of the property at Rs. 12,22,4000 as most arbitrary. At least the respondent No.2 is required to mention the basis on which the market value of the property is fixed at Rs. 12,22,400. Thus, it can be said that the impugned order dated 20th March 1993 is a non-speaking order. It also appears that number of submissions were made by the petitioner before the appellate authority, but the appellate authority has not dealt with the same and has not discussed the same in his order. Thus, the impugned order, passed by the appellate authority, is required to be quashed and set aside and the matter is required to be remanded to the appellate authority. However, in view of the fact that the first order passed by the Deputy Collector dated 20th March

1993 itself is a non-speaking order and there is nothing mentioned on what basis the market value has been fixed at Rs. 12,22,400 while quashing and setting aside both the orders the matter is required to be remanded to the Deputy Collector for passing a fresh order in accordance with law and on merits after following necessary procedure as required under Rule 4(2) of the Rules and after giving opportunity to the petitioner for passing a speaking and reasoned order pointing out the basis for fixing the market value of the property in question.

6. For the reasons stated hereinabove, both the impugned orders are quashed and set aside. The matter is remanded to the respondent No.2 for passing a fresh order in accordance with law and considering the observations made hereinabove. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

rmr.